

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6191 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

HARVEY E. SMITH (Claimant)

PRECEDENT
BENEFIT DECISION
No. P-B-175

S.S.A. No.

FORMERLY BENEFIT DECISION No. 6191
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The above-named claimant on September 21, 1954, appealed from the decision of a Referee (SF-440) which held the claimant ineligible for benefits under Section 1253(c) of the California Unemployment Insurance Code.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant, an auto parts salesman, was last employed in San Francisco for an undisclosed period ending August 17, 1953. In September of that year he moved to Spokane, Washington, intending to enter an independent business. After several months, the plans for the business were abandoned, and the claimant re-entered the labor market.

Effective January 3, 1954, the claimant registered for work and filed a claim for benefits in Spokane with California as the liable state. On June 15, 1954, the claimant registered for work and transferred his claim for benefits to a San Francisco Office of the Department of Employment. On July 22, 1954, the Department issued a determination which held the claimant ineligible for benefits for the week ended June 19, 1954, on the ground that he was not available for work as required by Section 1253(c) of the Unemployment Insurance Code. This determination was predicated on a finding that the claimant

was in travel status the entire day, Monday, June 14, and, therefore, ineligible for benefits for the entire benefit week. The claimant appealed to a Referee who affirmed the determination of the Department.

Being unable to obtain employment in Spokane, the claimant, some time in May, wrote to a former employer in San Francisco. The employer replied that if the claimant would come to San Francisco, an effort would be made to place him. Accordingly, the claimant left Spokane on Sunday, June 13, and spent the entire day of Monday, June 14, en route to San Francisco. Commencing June 15, 1954, the claimant instituted a diligent search for work in San Francisco, but was unsuccessful in obtaining employment until July 6, 1954, when he was hired by the employer with whom he had corresponded. The claimant was at all times ready, willing and able to accept any suitable permanent or temporary work in San Francisco.

REASON FOR DECISION

It is a well-established rule that in order to be eligible for benefits for any week of unemployment, a claimant must be able to work and available for work each normal and customary working day of the week in question (Benefit Decision No. 5897 and 5941). The precise issue presented by the instant case is whether the fact that the claimant was in travel status during what was apparently a normal and customary working day, namely, Monday, June 14, 1954, rendered him ineligible for the benefits for the week ended June 19, 1954.

In Benefit Decision No. 3997, this Board had occasion to consider the eligibility of a claimant for benefits during a period that he traveled from Green Bay, Wisconsin, to San Jose, California. In this decision, we stated in pertinent part as follows:

"Some of the pertinent factors, among others, to be considered in this special type of case are whether the purpose of the travel is to engage in a bona fide search for work rather than a trip undertaken for personal reasons; the usual occupation of the claimant; whether work in that occupation ordinarily is obtained by travel; the length of time spent in a locality where there is an employment field in the worker's usual occupation; and the causes impelling a worker to remain

continually in transit rather than establishing himself a reasonable time in a community where there may be an opportunity for him to obtain employment."

Although the facts of the cited case required us to deny benefits therein, the reasoning quoted above establishes a principle directly applicable here. Briefly stated, this principle is that traveling from one community to another does not in and of itself render the individual concerned unavailable for work and ineligible for benefits. This principle recognizes the extreme mobility of the American labor force which consists at any stated time of large numbers of individuals who move about the country freely because of labor market conditions. Considering the large distances involved, such individuals cannot at all times be physically present in a specific geographical labor market.

In the instant case, the claimant, in accordance with a preconceived plan, following advice from his former employer that an effort would be made to place him, removed himself from the labor market in Spokane in order to expose himself to possible opportunities of employment in the labor market of San Francisco. It is true that, on Monday, June 14, 1954, the claimant had not yet arrived in the latter city, but this is only one of the factors to be considered. Other factors to be considered are the lack of employment prospects in the foreseeable future in Spokane, the reasonableness of the claimant's decision to move to San Francisco, the fact that the sole reason for the move was the belief that it would enhance the claimant's possibilities of employment, and the fact that the claimant could not reach San Francisco without spending a day or so in travel. In our opinion, these other factors outweigh the circumstance that during Monday, June 14, the claimant was not physically present in the geographical area where he intended to offer his services. So far as the record discloses, the claimant was genuinely in the labor market without restrictions or limitations on acceptable employment and he diligently and actively sought work on his own behalf. Based on the facts in this case, we conclude that the claimant was available for work and eligible for benefits for the week ended June 19, 1954.

DECISION

The decision of the Referee is reversed. Benefits are payable for the week ended June 19, 1954, if the claimant was otherwise eligible.

Sacramento, California, January 6, 1976

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

DISSENTING - Written Opinion Attached

HARRY K. GRAFE

DISSENTING OPINION

I dissent for the reasons set forth in my dissenting opinion in Appeals Board Decision No. P-B-168.

Here again, the majority assert that their decision is "based on the record," yet the record in this case was long ago destroyed and has not been seen, let alone reviewed, by any member of this Board.

Moreover, I find myself philosophically opposed to the rule of law being established by the majority in this case. I believe benefits should be denied in the factual situation outlined here. There is nothing on the face of the decision to show that the claimant could not have travelled on non-work days. Where a claimant, as the claimant here, chooses instead to travel on work days, then the claimant should be ineligible for benefits for that week within the meaning of section 1253(c) of the code.

This is another of the decisions adopted by the majority without permitting any discussion of the merits, a transgression of the guarantee of due process of law.

HARRY K. GRAFE